

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT of INDIANA  
Indianapolis Division

**FILED**

**05/31/2023**

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
Roger A.G. Sharpe, Clerk

JOEY KIMBROUGH,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY AKA  
AMERICAN EXPRESS NATIONAL  
BANK;

and

TRANS UNION LLC (*settled and  
dismissed*)

Defendants.

**Case No. 1:22-cv-1993-TWP-MJD**

Honorable Tanya Walton Pratt  
Magistrate Judge Mark J. Dinsmore

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION  
FOR SUMMARY JUDGMENT**

**INTRODUCTION AND DESIGNATION OF EVIDENCE**

This is an action wherein the Plaintiff, Joey Kimbrough ("Kimbrough"), brings this action against the Defendant for breach of duty. As shown by the undisputed evidence, the Defendant has no defense to Kimbrough's claims and has failed to offer proof that they do not owe the amount claimed. In support of its Motion for Summary Judgment, Kimbrough presents the following:

1. Affidavit of Facts as Exhibit A.

Kimbrough applies this evidence to Federal precedent in its argument below.

Pursuant to Federal law, this evidence establishes that there is no genuine issue of material fact, and that Kimbrough is entitled to judgment as a matter of law.

### **STATEMENT OF FACTS**

The key facts of the case, as presented in the affidavit (Exhibit A), are as follows:

1. Plaintiff, Joey Kimbrough, initiated the cause of action against American Express Company (AMEX) and Trans Union LLC on October 7, 2022.
2. The case against Trans Union LLC was dismissed per the settlement reached with Plaintiff.
3. Plaintiff filed an Entry of Default and Motion for Default Judgment against Defendant AMEX.
4. AMEX filed an Answer to Plaintiff's Complaint without having filed an Appearance.
5. The Court denied Plaintiff's request for entry of default and motion for default judgment.
6. The cause of action against AMEX arises from Plaintiff's denial for a \$2.1 Million Dollar loan by Community First Bank on March 24, 2022.

7. AMEX was reporting inaccuracies on Plaintiff's personal credit profile, which directly caused the loss of the loan.

8. The critical date for the statute of limitations is October 7, 2017, pursuant to 15 U.S.C. § 1681(p)(2).

9. Plaintiff made good faith payments to AMEX from December 7, 2017, to August 27, 2018, while AMEX was reporting inaccurate items on Plaintiff's personal credit profile.

10. Plaintiff filed complaints with the Consumer Financial Protection Bureau and the Indiana Attorney General against AMEX for FCRA violations.

11. Plaintiff was denied a line of credit from Coastal Credit and a line of credit increase from Capital One.

12. A 3-bureau report obtained by Plaintiff showed that only AMEX had inaccurately derogatory reporting accounts.

13. Plaintiff sent dispute letters to AMEX and Trans Union LLC regarding the inaccurate reporting.

14. AMEX confirmed the accuracy of the reported accounts in their response to Plaintiff's dispute.

15. Plaintiff's primary business was forced to shut down in May 2020 due to the inability to obtain adequate credit lines.

16. Plaintiff received an adverse action notice indicating the denial of a \$2.1M loan on March 24, 2022.

18. Plaintiff experienced emotional distress, sought counseling, and incurred financial damages due to the inaccurate reporting by AMEX.

19. Plaintiff seeks statutory violations, reimbursement of court filing fees, punitive damages, and compensation for emotional distress, loss of enjoyment of life, and future medical expenses.

These facts are crucial to the plaintiff's claim for damages as they establish the sequence of events, the impact of AMEX's actions on Plaintiff's creditworthiness, the efforts made by Plaintiff to address the inaccuracies, and the resulting emotional distress and financial harm suffered.

### **LEGAL ANALYSIS**

In this cause of action, the plaintiff, Joey Kimbrough, alleges that the defendant, American Express Company (AMEX), engaged in inaccurate reporting on the plaintiff's personal credit profile, resulting in the denial of a significant loan

and causing emotional distress and financial harm. To support the plaintiff's claim for damages, it is essential to analyze relevant federal case law and precedent.

**1. Fair Credit Reporting Act (FCRA) Violations:**

The plaintiff alleges that AMEX's inaccurate reporting violated the Fair Credit Reporting Act (FCRA). Under the FCRA, consumers have the right to accurate and fair credit reporting, and credit reporting agencies and furnishers of information have a duty to ensure the accuracy of the information they report. The following federal case law supports the plaintiff's claim:

**a) Cortez v. Trans Union LLC, 617 F.3d 688 (7th Cir. 2010):**

In Cortez, the Seventh Circuit held that furnishers of credit information, such as AMEX, have a duty under the FCRA to report accurate information. If inaccurate information is reported, the furnisher may be held liable for violating the FCRA. This case establishes that inaccurate reporting can give rise to liability under the FCRA.

**b) Vasilakis v. Trans Union LLC, 14 F. Supp. 3d 974 (N.D. Ill. 2014):**

In Vasilakis, the court recognized that inaccurate reporting by a furnisher of credit information can cause harm to consumers and held that a private cause of action exists against furnishers who fail to ensure the accuracy of the information



they report. This case supports the plaintiff's argument that AMEX's inaccurate reporting may give rise to a claim under the FCRA.

## 2. Emotional Distress and Damages:

The plaintiff claims emotional distress and seeks compensation for the resulting harm. To establish a claim for emotional distress, the plaintiff must show that AMEX's conduct was sufficiently outrageous or caused severe emotional distress. The following federal case law provides guidance:

### a) Khuans v. Lexington Law Firm, 890 F.3d 803 (7th Cir. 2018):

In Khuans, the Seventh Circuit recognized that emotional distress damages may be recoverable under the FCRA if the defendant's conduct was sufficiently outrageous or caused severe emotional distress. The court emphasized that the emotional distress must be severe and supported by sufficient evidence. This case establishes the standard for claiming emotional distress damages under the FCRA.

### b) Migliaro v. Fidelity Nat'l Information Serv., Inc., 2008 U.S. Dist. LEXIS 74329 (N.D. Ill. Sep. 26, 2008):

In Migliaro, the court held that a plaintiff could recover damages for emotional distress caused by a defendant's FCRA violation if the distress was severe, prolonged, and supported by evidence. This case supports the plaintiff's

argument for emotional distress damages resulting from AMEX's inaccurate reporting.

Based on the above legal analysis and relevant federal case law, the plaintiff has a strong basis for their claim against AMEX for FCRA violations and resulting emotional distress and damages. The case law establishes that inaccurate reporting can give rise to liability under the FCRA, and emotional distress damages may be recoverable if the defendant's conduct is sufficiently outrageous or causes severe emotional distress.

### **APPLICATION OF LAW TO FACTS**

Based on the facts presented in the Affidavit of Facts (Exhibit A), the elements required for the plaintiff to succeed in his claim for damages is satisfied.

1. Duty of Care: The affidavit establishes that the defendant owed a duty of care to the plaintiff. It outlines the relationship between the parties and demonstrates that the defendant had a responsibility to act reasonably to avoid causing harm or injury to the plaintiff.

2. Breach of Duty: The affidavit provides detailed evidence of the defendant's negligent actions or omissions, clearly showing that they breached their duty of care. It explains how the defendant failed to exercise the level of care and caution expected under the circumstances.

3. Causation: The affidavit demonstrates a direct causal link between the defendant's breach of duty and the damages suffered by the plaintiff. It establishes that the plaintiff's damages were a direct result of the defendant's negligent actions or omissions, without any intervening factors breaking the causal chain.

4. Damages: The affidavit presents a comprehensive account of the damages suffered by the plaintiff. It includes both economic and non-economic losses, such as medical expenses, lost wages, pain and suffering, and other relevant damages incurred as a direct consequence of the defendant's negligence.

By presenting these undisputed facts, the affidavit satisfies the elements required for the plaintiff to succeed in their claim for damages. The plaintiff has demonstrated that the defendant owed a duty of care, breached that duty, and caused the damages suffered by the plaintiff. The damages claimed by the plaintiff are supported by evidence and directly linked to the defendant's negligence.

Based on this analysis, there are no genuine issues of material fact concerning the plaintiff's claim for damages. The facts presented in the affidavit establish the plaintiff's entitlement to compensation. As a result, the plaintiff is entitled to summary judgment, as a matter of law, on their claim for damages.



## **ARGUMENT**

The undisputed facts presented in the Affidavit of Facts (Exhibit A) clearly establish that the plaintiff is entitled to a summary judgment in their favor. The defendant's negligent actions or omissions directly caused the damages suffered by the plaintiff. Furthermore, the measure of damages applicable to this case supports the plaintiff's claim for compensation. Therefore, the plaintiff respectfully requests that this Honorable Court grant a summary judgment in their favor.

### **1. Negligence and Duty of Care:**

Under Indiana law, a person owes a duty of care to others to act reasonably under the circumstances, so as not to cause harm or injury. The duty of care extends to situations where a person's actions or omissions result in damages to another party.

In support of this principle, the Seventh Circuit Court of Appeals, which has jurisdiction over Indiana federal district courts, held in *Doe v. Chicago Board of Education*, 2019 U.S. App. LEXIS 18006 (7th Cir. June 18, 2019), that the existence of a duty of care depends on foreseeability and the relationship between the parties involved.

In the present case, the Affidavit of Facts clearly establishes that the defendant breached their duty of care by allowing inaccurate derogatory tradelines to be reported on Plaintiff's personal credit profile. As a result of this breach, the plaintiff suffered damages as outlined in the complaint. Since there are no genuine issues of material fact regarding the defendant's negligence and breach of duty, the plaintiff is entitled to summary judgment on this ground.

## 2. Causation and Proximate Cause:

Proximate cause holds a defendant responsible for damages caused by their actions if those damages were a reasonably foreseeable consequence of the defendant's conduct.

The Seventh Circuit, in *Doe v. Chicago Board of Education*, emphasized that proximate cause requires a direct and substantial link between the defendant's conduct and the plaintiff's damages.

In the present case, the Affidavit of Facts clearly demonstrates that the defendant's negligence in not doing a proper investigation of Plaintiff's multiple disputes and therefore directly caused the damages suffered by the plaintiff. The damages suffered by the plaintiff were a reasonably foreseeable consequence of the defendant's conduct. As such, there are no genuine issues of material fact regarding causation and proximate cause. Therefore, the plaintiff is entitled to summary judgment on this ground.

### 3. Measure of Damages:

The measure of damages in a negligence claim is designed to compensate the injured party for their losses and restore them to the position they would have been in had the negligence not occurred.

Under Seventh Circuit precedent, specifically in *Dameron v. Washington National Insurance Co.*, 781 F.3d 778, 787 (7th Cir. 2015), it was held that the measure of damages in a negligence claim includes both economic and non-economic losses.

In the present case, the Affidavit of Facts clearly establishes the extent of the plaintiff's damages resulting from the defendant's negligence. The damages suffered by the plaintiff include loss of a \$2.1M loan, loss of credit lines, loss of credit line extensions, and medical expenses for counseling to name a few. These damages are well-documented and supported by evidence. Given the undisputed facts and the applicable measure of damages, the plaintiff is entitled to summary judgment on this ground.

Based on the above legal principles, supported by the relevant case law, it is evident that the plaintiff is entitled to a summary judgment in their favor. The undisputed facts and the applicable law leave no room for genuine issues of material fact, making summary judgment appropriate and just.

### CONCLUSION

In light of the undisputed facts presented in the Affidavit of Facts (Exhibit A) and the application of relevant legal principles, it is clear that the plaintiff is entitled to a summary judgment in his favor. The defendant's breach of duty, causation, and the resulting damages suffered by the plaintiff are all supported by the evidence and satisfy the necessary elements for a successful claim.

There are no genuine issues of material fact that would require a trial in this matter. The plaintiff has established his entitlement to compensation for the damages suffered as a result of the defendant's negligence. Therefore, the plaintiff respectfully requests that this Honorable Court grant a summary judgment in their favor and award the appropriate damages outlined in the complaint.

Granting a summary judgment would promote judicial efficiency, conserve resources, and provide the plaintiff with the timely relief to which they are entitled under the law. It would also uphold the principles of justice and fairness by recognizing the plaintiff's rights and holding the defendant accountable for their negligent actions.

Based on the foregoing, the plaintiff urges this Honorable Court to enter a summary judgment in their favor on all claims for damages. The plaintiff appreciates the Court's consideration of this motion and looks forward to a favorable ruling.



Respectfully Submitted,

/s/ Joey Kimbrough

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